

BEFORE THE  
**Federal Communications Commission**

WASHINGTON, D. C. 20554

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In the Matter of )

Definition of Markets for )  
Purposes of the Cable Television )  
Mandatory Television Broadcast )  
Signal Carriage Rules )

CS DOCKET NO. 95-178

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To: The Commission

REPLY COMMENTS

The Federal Communications Commission issued a Notice of Proposed Rule Making (the "Notice") in the above-captioned matter on December 8, 1995, seeking comments on its proposal to revise the definition of broadcast television markets for purposes of cable television carriage rules. Golden Empire Television Corporation, by its counsel, submits this reply to comments filed in this matter. Golden Empire Television Corporation is the licensee of television broadcast station KHSL-TV, Channel 12, Chico, California.

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### Background

Broadcast television stations can elect every three years between requiring cable systems in their local markets to carry their signals ("must-carry") and permitting the systems to carry their signals only with the stations' consent ("retransmission consent").<sup>1</sup> The current regulations provide that the definition of a television station's local market is to be updated every three years, coordinated with the election cycle.<sup>2</sup>

The market definitions were originally based expressly on "Areas of Dominant Influence" ("ADIs") as defined by the Arbitron Company ("Arbitron").<sup>3</sup> However, Arbitron no longer updates its determination of ADI boundaries. Thus, the Commission issued the Notice to propose a new mechanism for defining stations' markets.

The Commission set forth three options for defining local markets of broadcast television stations: 1) substitute Nielsen's current "Designated Market Areas" ("DMAs") for the old ADIs; 2) continue using Arbitron's ADIs from 1991-92; or 3) retain ADIs for the 1996 election and use DMAs thereafter.

Most commenters advocated substituting current DMAs for the outdated ADIs. Numerous arguments were advanced to support this position. Commenters emphasized the importance and benefits of a system based on market definitions that are more accurate. Golden Empire Television Corporation agrees that Use of DMAs is the simplest

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<sup>1</sup> Communications Act of 1934, §§ 325, 614, added by sections 6 and 4 of the Cable Television Consumer Protection and Competition Act of 1992. Pub. L. 102-385, 106 Stat. 1460 (1992) ("1992 Cable Act").

<sup>2</sup> 47 C.F.R. § 76.55(e), Note.

<sup>3</sup> *Id.*

means of following changes in market areas. In addition, many noted that adoption of DMAs is consistent with Congressional intent, the Commission's prior analysis of this issue, and Commission action in other market-based matters.

Nevertheless, a few commenters, who oppose must-carry anyway, wanted to keep using the four-year-old ADI definitions. The main arguments advanced for maintaining the status quo were "stability" and the supposed convenience of cable viewers.

### Discussion

#### I. Accuracy in television market definitions is more important than "stability."

In choosing between the Notice's options, using market definitions that accurately reflect current viewing habits and preferences and that will automatically adapt to future changes is more important than "stability," that is, freezing market definitions in the past.

Despite a preference for stability professed by a few cable operators in this proceeding, cable systems frequently change channel lineups. "Stability" has not been, nor should it be expected to be, the guiding principle of cable system lineups.

The commenting cable systems oppose updating the market definitions because they do not want to adjust their channel lineups for changes in the local television market. However, perpetuating the 1991-92 market definitions will not prevent cable viewers from being subject to any further channel changes. Cable systems can and will continue to make changes in the programs carried on their systems.

The cable systems also argue against updating market definitions because of the fear that use of current market definitions might require some of them to carry additional local

stations. This, they complain, would force them to drop "popular" cable channels to carry newly required local broadcast channels. This argument is overwrought and false.

Some cable systems have unused channel capacity and would not have to drop any channels. Any system already carrying the maximum number of local stations required under the regulations would not have to add any additional local channels.<sup>4</sup> Further, no system would have to carry a more distant affiliate of a network for which it already carries a closer affiliate.<sup>5</sup>

Congress itself has already decided that accuracy should be a higher priority in this area than stability. The 1992 Cable Act specifically provided broadcast stations the opportunity to update their must-carry elections every three years.<sup>6</sup> In addition, the 1992 Cable Act established the process whereby a station's market definition could be changed to reflect more accurately the station's viewership.<sup>7</sup>

Accuracy in the definitions of television markets is also more consistent with the purpose behind the must-carry provisions. Freezing market definitions in the past does violence to the public policy behind must-carry. The must-carry option was instituted to ensure that smaller local broadcast television stations would be available to the viewing

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<sup>4</sup> 47 C.F.R. § 76.56(b).

<sup>5</sup> 47 C.F.R. § 76.56(b)(5).

<sup>6</sup> Communications Act, § 325(b)(3)(B), added by 1992 Cable Act, § 6.

<sup>7</sup> Communications Act, § 614(h)(1)(C), added by 1992 Cable Act, § 4.

public even if the cable systems did not see fit to compensate the broadcasters for use of their signals.<sup>8</sup>

The area in which a station can exercise its must-carry option must be accurately drawn if must-carry status is to be fairly exercised. Cable television subscribers consistently view the local broadcast stations through the cable retransmission of those stations. Therefore, it is imperative that local broadcast stations are carried in their service areas in order to fulfill the purpose of their spectrum allotments. They can hardly be expected to serve their communities if their signals are not available throughout their local markets. This is most fairly accomplished by use of the best objective definition of the local markets, namely, the regularly updated DMAs as determined by Nielsen.

Any disruption to cable viewers from replacing old ADIs with current DMAs will be minimal. It will merely be comparable to the disruption that the industry was bound to expect had Arbitron continued publishing ADI definitions. Furthermore, the improvement in the accuracy of the market definitions by adoption of current definitions greatly outweighs any disruption that does occur.

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<sup>8</sup> H.R. Rep. No. 102-628, 103d Cong., 2d Sess. 97 (1992).

**II. The DMA market definition makes the most efficient use of public and private resources.**

Most commenters noted that, regardless of the use of ADIs or DMAs, the market definitions can be refined by special petition to the Commission. This procedure is specified in Section 614(h) of the Communications Act and is implemented by Section 76.59 of the Commission's rules.

This special proceeding, however, should not be relied on to ameliorate problems and injustices resulting from use of out-dated market definitions. The Commission will make best use of its limited resources, as well as the resources of the stations and systems involved, if it selects the market definition that will require the least additional refinement through the special petition process.

The market definition that satisfies this requirement is the one that most accurately reflects current market conditions and adapts to future changes without necessitating further Commission proceedings. This market definition is based on use of regularly updated DMAs.

It is preferable for the Commission to adopt the presumptive market definitions that will minimize the need for these special proceedings. Substitution of current DMA definitions for ADI delineations that are four years out of date accomplishes this.<sup>9</sup>

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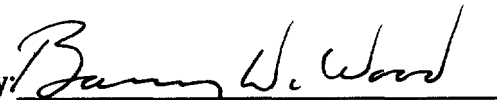
<sup>9</sup> The Commission should retain any refinement of the market definition for a particular broadcast station accomplished through this special petition process until further changes are effected through another special petition. Any subsequent changes in the general DMA for that area should not overrule the changes made in a special proceeding for a specific station.

Conclusion

Golden Empire Television Corporation agrees with the majority of the commenters: It strongly encourages the Commission to adopt the first option discussed in the Notice. Use of commercial market definitions that will be regularly updated will be the most efficient means of providing accurate and fair determinations for must-carry elections. For these reasons, the Commission should use Nielsen's DMA determinations of local market boundaries in connection with the mandatory carriage rules.

Respectfully submitted,

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Dated: February 26, 1996

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